(152)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SRI S.R. NAYAK, CJ

WRIT PETITION NO.6384 OF 2005

PETITIONERS

1. LAFARGE INDIA PRIVATE LIMITED, A Company incorporated and registered under the relevant oprovisions of the Companies Act, 1956, having its registered Office at; Bakhtawar, 14th Floor, 229, Nariman OPoint, Mumbai – 400 001.

   AND Cement Plant at Village Arasmeta, P.O. Gopal Nagar, District Janjgir-Champa (CG) 495 663.
2. S.K. TIWARI, S/o Late Shri Govind Tiwari, Works Manager, Arasmeta Cement Plant, P.O. Gopal Nagar, Dist: Janjgir-Champa (CG)

Versus

RESPONDENTS

1. State of Chhattisgarh, Represented by the Secretary to the Government of CG, Department of Power/Electricity, DKS Bhawan, Mantralay, Rai pur (CG).
2. The Chief Electrical Inspector, Government of Chhattisgarh, Quarter No.437, Wdard No.36, 1st Floor, Near Government Chhattisgrah College, Byron Bazaar, Rai pur 492 001. (CG).
3. The Additional Tahsildar, Janjgir, P.O. Janjgir, District Janjgir-Champa (CG).

Present: Mr. B.P. Sharma, learned counsel for the petitioners.

Mr. N.K. Agrawal , learned Dy. A.G., with Mr. Yashwant Singh, learned Govt. Adv., for the State of Chhattisgarh.

O R D E R

(Passed on 19th of December 2005)

In this writ petition the petitioners to impugn the notice of demand dated 18/10/2005 issued by the Additional Tahsildar, Janjgir-Champa, the third respondent herein, in the prescribed form 'A' in exercise of his power under Section 146 read with section 155 (c) of the

Chhattisgarh Land Revenue Code, 1959 (*for short 'the Code'*) calling upon the petitioners to pay a sum of Rs.57,87,892/- towards arrears of electricity duty due to the State Government from the petitioners under the Chhattisgarh Electricity Duty Act, 1949 (*for short 'the 1949 Act'*).

(2) The petitioner No.1 is a company incorporated and registered under the relevant provisions of the Companies Act, 1956 and inter alia is engaged in the manufacture of cement at their works situate at village Arasmeta, P.O. Gopal Nagar, District Janjgir-Champa, popularly known as Arasmeta Cement Plant. The aforesaid Cement Plant had been established by Raymond Limited (Cement Division), Mumbai, in or about the year 1982 and its fixed assets had been acquired by the petitioner No.1 in the month of January, 2001. The petitioner No.2 is a Works Manager at the Arasmeta Cement Plant.

(3) This writ petition is filed under Articles 226/227 of the Constitution of India assailing the validity of the impugned notice of demand. The reliefs sought in this writ petition are the following:

(a) A writ of and/or in the nature of Mandamus do issue restraining the respondent State Authorities from giving any and/or further effect to the impugned notice of demand Annexure-P/1 and/or to desist from recovering any amount whatsoever from the petitioners as the alleged arrears of electricity duty payable under the 1949 Act pursuant to the impugned notice of demand Annexure-P/1.

(b) A writ of and/or in the nature of certiorari do issue calling upon the respondent State authorities to produce in this Court the complete record, files, inter and intra departmental correspondence,

registers etc. pertaining to the case on hand at the time of hearing, so that conscionable justice is done to the petitioners by quashing the impugned notice of demand Annexure-P/1.

(c) To issue any other appropriate writ, order or direction as may appear to the Hon'ble Court just, fit and appropriate in the facts and circumstances of the present case.

(d) To award full costs of the present proceedings to the petitioners against the respondents.

(4) Shri B.P. Sharma, learned counsel who appeared for the petitioner would strenuously contend that the petitioners are not liable to pay the money demanded by the third respondent in the impugned notice of demand and that the determination of the liability by the second respondent is totally erroneous. At this stage, it needs to be noticed that the petitioners have set out their case in detail in para 5 of the writ petition. There is no need for me to refer to and consider those details and claims put forth by the petitioners for the decision-making in this writ petition. Suffice it to state that the impugned notice is issued by the third respondent in exercise of the power conferred upon him under Section 155 (c) read with Section 146 of the Code. The third respondent has initiated the recovery proceedings on the basis of a certificate issued under sub-Section (1) of Section 145 of the Code. sub-Section (1) of Section 145 of the Code says that the statement of account, certified by the Collector or by the Tahsildar shall be presumed to be correct statement of the arrears payable to the Government or its amount and of the person who is defaulter, until the contrary is proved. Under sub-Section (2) of Section 145 it is stated that it is not necessary

to give any notice to the defaulter before drawing up the statement referred to in sub-Section (1). The expression "until the contrary is proved" occurring in sub-Section (1) clearly shows that the defaulter is entitled to an opportunity to contest the correctness of the amount or of his liability or of the payment of the amount. A Division Bench of the Madhya Pradesh High Court in the case of **Ghanshyamlal Vs. State**[1] reported in held that the presumption under Section 145(1) is a rebuttable presumption. Section 146 provides that a Tahsildar or Naib Tahsildar may cause a notice of demand to be served on any defaulter before the issue of any process under Section 147 for the recovery of an arrear. It is at this stage that the defaulter is entitled to be heard before any step for the recovery of amount is taken under Section 147. The word "may" used in Section 146 should be construed as "shall". This position is made further clear by Rule 2 of the Rules framed under Sections 146 and 147 of the Code which states that a notice of demand shall issue in duplicate in Form A and shall be signed and sealed by the officer issuing it. Therefore, it is open for the petitioners to file their objections, if any, before the third respondent. The presumption incorporated in sub-Section (1) of Section 145 in respect of statement of account certified by the Collector showing the amount of arrears payable to the Government is rebuttable meaning thereby that it will be presumed to be correct as long as the contrary is proved. As held by the Full Bench of the Madhya Pradesh High Court, in **Ramchandra Vs. State of M.P.**[2] reported in, if recovery proceedings are started on the basis of a certificate issued under Section 145(1) of

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1. **1961 RN 409 = 1961 JLJ SN 384 = 1961 MPLJ SN 218**
2. **1979 RN 33 (FB)**

the Code, the recovery officer should stay the recovery proceedings and should direct the objector to file his objections before the authority issuing the certificate under Section 145 (1) of the Code who shall decide the objections and inform the recovery officer about the further action that has to be taken. In the same case, it was also held that in case the objector requests that his objections should forwarded to the authority issuing the certificate under Section 145(1) of the Code, the recovery officer, if he finds that the objection is reasonable, should forward it to such an authority for decision before proceeding further with the case. Quite curiously the petitioners without filing any objection either before the third respondent or before the Tahsildar after receipt of the impugned notice of demand have straightaway have filed this writ petition. The third respondent – the Recovery Officer cannot go into correctness of the certificate issued under Section 145(1) of the Code. If the petitioners had any objections to the impugned notice of demand, they should have filed their objections before the third respondent without any loss of time and requested him to refer their objections to the authority issuing the certificate under Section 145 (1) of the Code for their decision and sought for stay of the recovery proceedings till then in view of the judgments of the Mladhya Pradesh High Court in the case of **Ghanshyamlal Vs. State**[1] (supra) and **Ramchandra Vs. State of M.P**[2] (supra). Even otherwise, the dispute brought before this Court by way of this writ petition bristles that disputed facts and resolution of such dispute is not possible in a summary proceeding under Article 226 of the Constitution. There is no justification for the petitioners to rush to this Court straightaway under Article 226 of the Constitution after receipt of the impugned notice of demand without resorting to the

remedies available under the Code itself and in the light of the aforementioned judgments of the Madhya Pradesh High Court.

(5) In the circumstance, I am not inclined to entertain this writ petition. It is accordingly dismissed at the stage of admission itself, however, reserving liberty to the petitioners to work out their legal remedies, as provided under the Code. There shall be no order as to costs.

Sd/-
Chief Justice

Brijesh